CHAN TAK SANG v. PUBLIC PROSECUTOR

[C. A. (Mathew C.J., Abdul Hamid and Smith JJ.) November 22, 1956]

[K. L. — F.M. Criminal Reference No. 4 of 1956]

Road Traffic — Motor Vehicles (Third Party Risks) Regulations, reg. 3 — Disqualification — Whether Court has discretion where there is automatic disqualification.

In this reference the point to be determined was: "Whether a Court has power to disqualify a person convicted of an offence against reg. 3 of the Motor Vehicles (Third Party Risks) Regulations, 1946, for holding or obtaining a driving licence and if so whether the period of disqualification can exceed 12 months."

Held: the Court has power to order disqualification for a period less than 12 months or to dispense with disqualification for special reasons and to order disqualification for a period longer than 12 months. There is no necessity for the Court to order disqualification for a period of 12 months since such disqualification is automatic.

Lim Teng Hong v. Public Prosecutor[1] disapproved.

Cases referred to:—

(1) *Lim Teng Hong v. Public Prosecutor, ante* p. 214.

(2) *Cullen v. Trimble* L.R. 7 Q.B. 416.

(3) *Magor & St. Mellons Rural District Council v. Newport Corpn.* (1952) A.C. 189.

COURT OF APPEAL.

P. Hall for the appellant.

E. Brown (Federal Counsel) for the respondent.

Smith J.: — The Public Prosecutor has certified that the above case involves the following point which it is desirable in the public interest to have determined:—

"Whether a Court has power to disqualify a person convicted of an offence against Regulation 3 of the Motor Vehicles (Third Party Risks) Regulations No. 452 of the 30th March, 1946, for holding or obtaining a driving licence and if so whether the period of disqualification can exceed twelve months."

The essential facts of the case are that the applicant pleaded guilty to the offence of using his motor car on the public road without there being in force in respect of such use a policy of insurance contrary to Regulation 3(1) and punishable under Regulation 3(2) of the Motor Vehicles Third Party Risks Regulations. The learned Magistrate fined the applicant $20 and stated that the defendant was disqualified for driving for twelve months, which disqualification the learned Magistrate considered to be mandatory. The applicant applied to the High Court for revision on the ground that the Court had no power to make an order of disqualification. The learned Judge, Buhagiar J. in exercising the power of revision, considered that the order of the learned Magistrate should not be interfered with.

The learned Judge referred to two *dicta* of Thomson J. in the case of *Lim Teng Hong v. Public Prosecutor*[1]:—

"Under the Regulation disqualification for twelve months follows automatically on a conviction and I am satisfied that in the absence of anything outside the four corners of the Regulation there is no power in the Court to make any order of any sort. It was for that reason that I set aside the order disqualifying the present appellant for two years.";

and

"Regulation 3(2) says that the disqualification which it attaches to a conviction is to be 'without prejudice to the power of the Court to order a longer period of disqualification' and I have been unable to discover, nor has the D.P.P. been able to show me, anything that gives the Court any power to disqualify on conviction for such an offence under the Regulation. It seems to me, and again I speak without certainty, that no such power exists."

In his Grounds of judgment Buhagiar J. said:—

"Regulation 3(2) clearly lays down that on conviction the offender shall be liable to a fine or to imprisonment or to both and also he shall be disqualified for holding or obtaining a driving licence. In my opinion the Court on convicting has implicit power to sentence the offender to a fine or to imprisonment or to both and also to make an order of disqualification; and since the coming into force of the said regulation, that is since the 1st July, 1946, both the Magistrates' Courts and the High Court in its Appellate jurisdiction have consistently considered themselves vested with this power."

Later in his judgment he said:—

"Looking at the provisions of this regulation the jurisdiction to make an order of disqualification is impliedly, if not expressly, given to the Court (see **Cullen v. Trimble**[2].

I may also add that Regulation 3(2) provides that 'a person convicted of an offence under this Regulation shall (unless the Court for special reasons thinks fit to order otherwise and without prejudice to the power of the Court to order a longer period of disqualification) be disqualified for holding or obtaining a licence for a period of twelve months from the date of conviction.' Now I think there is no doubt that the Court has power 'to order otherwise' and that being so it would be illogical to hold that the Court has no power to make an order for disqualification.".

We are therefore called upon to interpret Regulation 3(2) of the Motor Vehicles Third Party Risks Regulations which reads:—

"If a person acts in contravention of this Regulation he shall be liable to a fine of five hundred dollars or to imprisonment for a term of three months or to both such fine and imprisonment and a person convicted of an offence under this Regulation shall (unless the Court

for special reasons thinks fit to order otherwise and without prejudice to the power of the Court to order a longer period of disqualification) be disqualified for holding or obtaining a driving licence for a period of twelve months from the date of the conviction.".

The modern doctrine of the interpretation of penal statutes is well set out in *Maxwell* 7th edition page 244 :—

". . . . The effect of the rule of strict construction might almost be summed up in the remark that, where an equivocal word or ambiguous sentence leaves a reasonable doubt of its meaning which the canons of interpretation fail to solve, the benefit of the doubt should be given to the subject and against the Legislature which has failed to explain itself. But it yields to the paramount rule that every statute is to be expounded according to its expressed or manifest intention and that all cases within the mischiefs aimed at are, if the language permits, to be held to fall within its remedial influence.".

There is in regulation 3(2) a possible *casus omissus*. The regulation appears to have been copied from section 51(2) of the F.M.S. Traffic Enactment. In that Enactment the power of the Court to order a longer period is contained in section 20. (The corresponding sections of the United Kingdom Road Traffic Act, 1930, are sections 35(2) and section 6).

Up to 14th March 1946 the provisions of section 20 of the Traffic Enactment relating to disqualification were probably still in force but when British Military Administration Proclamation No. 69 was published on that day the Traffic Enactment was repealed in so far as it related to motor vehicles. The Motor Vehicles Third Party Regulations were not signed until 21st March and were gazetted on 30th March 1946.

A recent authority on interpretation of statutes is the House of Lords decision in *Magor & St. Mellons Rural District Council v. Newport Corpn.*[3] the headnote of which reads :—

"In the construction of a statute the duty of the court is limited to interpreting the words used by the legislature and it has no power to fill in any gaps disclosed. To do so would be to usurp the function of the legislature.".

Lord Morton of Henryton said :—

". . . . In so far as the intention of Parliament or of Ministers is revealed in Acts of Parliament or Orders, either by the language used or by necessary implication, the courts should, of course, carry these intentions out; but it is not the function of any judge to fill in what he conceives to be the gaps in an Act of Parliament. If he does so, he is usurping the function of the legislature.".

Applying these principles to the regulation before this Court it is clear that one must not look outside the Road Transport Proclamation and the Regulations in order to interpret this particular regulation. The F.M.S. Traffic Enactment cannot supply any missing powers because it was repealed a few days before the Regulations were made. On the other hand one must not say that because the model upon which the regulation is based has not been fully followed and in consequence the words "the power of the Court" have nothing antecedent or subsequent to which to refer one must reject the words *in toto*. The intention of the passage must be discovered from the language used. If the intention is manifest or revealed by necessary implication effect must be given to the intention.

The intention of this regulation appears to be that every person who is found to have acted in contravention of the regulation, whether convicted thereof or not, shall automatically be disqualified for a period of twelve months. The Court has power to modify this statutory automatic period of disqualification in two ways :—

(1) when satisfied that special circumstances exist, by ordering a shorter period of disqualification or even no disqualification at all; and

(2) by ordering a longer period of disqualification.

We therefore agree with Buhagiar J. that the Court has power to vary the twelve-month automatic period of disqualification.

With reference to the point submitted by the learned Public Prosecutor, it follows that the Court has power to order disqualification for a period less than twelve months or to dispense with disqualification for special reasons and to order disqualification for a period longer than twelve months. There is no necessity for the Court to order disqualification for a period of twelve months since such disqualification is automatic.

This Court sees no reason on the facts of this case to interfere with the order made by the learned Magistrate.

Order accordingly.

Solicitors : *Shearn, Delamore & Co.*

DOROTHY YEE YENG NAM v. LEE FAH KOOI

[O. C. J. (Thomson J.) August 16, 1956]

[Ipoh — Divorce Suit No. 1 of 1956]

Divorce Ordinance, 1952, s. 4(1)(a) — Marriage contracted under a law providing that or in contemplation of which marriage is monogamous — Whether a Chinese domiciled in Perak can enter into a monogamous marriage — Whether the Straits Settlement Christian Marriage Ordinance, 1940 is a law providing that or in contemplation of which marriage is monogamous.